

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of May 29, 2007 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Office is expressly authorized to charge any deficiencies or credit any overpayments to Deposit Account No. 50-0951.

Claims 1-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,006,197 to d'Eon, *et al.*, (hereafter d'Eon), in view of applicant-admitted prior art (AAPA) or U.S. Patent 6,816,903 to Rakoshitz, *et al.* (hereinafter Rakoshitz). Claims 1-23 were further rejected under 35 U.S.C. § 103(a) as being unpatentable over non-patent literature "Web Marketing through Oracle iMarketing" by Bellare (Oracle iMarketing), in view of Rakoshitz.

Although Applicants respectfully disagree with all rejections in the Office Action, Applicants have amended the claims so as to expedite prosecution of the present application by emphasizing certain aspects of the invention. Applicants respectfully note, however, that such amendments should not be interpreted as the surrender of any subject matter, and that Applicants reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

Applicants have amended independent Claims 1, 11, and 14 to further emphasize certain aspects of the invention. Dependent Claims 7, 8, 20, and 21 have been amended by Applicants to maintain consistency among the claims. Dependent Claims 6, 9, 19, and 22 have been cancelled. As discussed in the following section, the claim amendments are fully supported throughout the Specification. No new matter has been introduced by virtue of any of the claim amendments presented.

**Aspects Of Applicants' Invention**

It may be useful at this juncture to reiterate certain aspects of Applicants' invention. One embodiment, typified by amended Claim 1, is a method of eliciting a response. The method can include identifying the available network capacity for transmitting electronic content for an electronic campaign and receiving consumer responses to the transmitted electronic content. The method also can include transmitting electronic content over the network according to a predetermined outbound transmission flow rate for the electronic campaign.

Further, the method can include concurrently determining the effectiveness of the electronic campaign by analyzing consumer responses to the transmitted electronic content. The transmitted electronic content can be transmitted over a plurality of delivery channels.

The method, moreover, can include further analyzing received consumer responses associated with each of the plurality of delivery channels used to transmit the electronic content and, based upon the received consumer responses analyzed, determining which of the plurality of delivery channels is more effective than each of the other of the plurality of delivery channels. (See, e.g., Specification, p. 13, lines 20-26.) Note that this determination is a separate and distinct determination based upon consumer responses apart from any analysis involving transmission flow or bandwidth usage. (Compare, e.g., Specification, p. 9, line 19 – p. 10, line 1, and p. 10, lines 16-24.) Accordingly, the method also can include selectively redirecting at least a portion of the electronic content from other of the plurality of delivery channels to the delivery channel determined to be more effective. (See, e.g., Specification, p. 13, lines 19-26.)

The method further can include dynamically modifying the outbound transmission flow rate for the electronic campaign. The dynamic modification, more particularly, can

be made according to the determined effectiveness of the electronic campaign and the identified available network capacity.

**The Claims Define Over The Cited References**

As already noted, independent Claims 1, 11, and 14 were each rejected as being unpatentable over d'Eon in view of AAPA or Rakoshitz, or alternatively, over Oracle iMarketing in view of Rakoshitz. Applicants respectfully submit, however, that none of the cited references, alone or in combination, teach or suggest every feature recited in amended Claims 1, 11, and 14.

For example, none of the cited references teach a mechanism or procedure for determining a most effective channel for transmitting electronic content, as recited in amended Claims 1, 11, and 14. Element 10 of Figure 1 in d'Eon is cited at page 4 of the Office Action as describing a system for "identifying the available network capacity." As described in the reference itself:

"FIG. 1 [illustrates a system], generally designated 10, which includes a digital processing apparatus such as a laptop computer or personal computer (PC) 12. The PC 12 is part of a wide area computer network 14 such as the Internet and which communicates therewith in accordance with conventional principles. As shown in FIG. 1, the PC 12 accesses a tracker module 16 that functions in consonance with the novel logic described below to provide tools for assessing the effectiveness of advertising on the Internet. It is to be understood that the tracker module 16 can reside partially or completely on the advertiser's home Web site 17, and partially on the PC 12.

"Additionally, the PC 12 can be associated with output devices such as a video monitor 18 and a printer 20. Also, the PC 12 can be associated with input devices such as a keyboard 22 and a mouse 24 or other pointing and moving device with which a user can initiate "clicks".

"In one exemplary embodiment, the system 10 advertises computer backup services that are performed using the Internet. Accordingly, the system 10 can access a database 26 that contains the names of subscribers to the backup service, and can also contain user identification information such as the subscribers' visitor identifications discussed below or other addresses.

"FIG. 1 schematically shows that the PC 12 can access one or more sites 28a-c on the portion of the Internet known as the World Wide Web. The sites 28a-c can present one or more banner advertisements 30, 32, 34. When one of the advertisements 30, 32, 34 is clicked on by a user to, e.g., hyperlink to a the site of the advertiser represented by the advertisement 30, 32, 34, the tracker software 16 undertakes the inventive method steps disclosed herein to unobtrusively track the user around the advertiser's site, thereby correlating the banner advertisement 30, 32, 34 clicked on to subsequent transactional activity.

"The Figures illustrate the structure of the tracker module 16 of the present invention as embodied in computer program software. Those skilled in the art will appreciate that the Figures illustrate the structures of logic elements, such as computer program code elements or electronic logic circuits, that function according to this invention. Manifestly, the invention is practiced in its essential embodiment by a machine component that renders the logic elements in a form that instructs a digital processing

apparatus (that is, a computer) to perform a sequence of function steps corresponding to those shown in the Figures." (Col. 4, lines 23-45.)

As described, the system in d'Eon in no way determines, in terms of analyzed consumer responses, which of a plurality of alternative channels is most effective for delivering electronic content. The determination of available network capacity noted in the Office Action refers to the capacity for conveying electronic content. It has nothing to do with determining which channel is most effective in terms of consumer response to that electronic content, as recited in the claims.

Another portion of d'Eon is cited at page 4 of the Office Action as disclosing "determining the effectiveness of [a] campaign by analyzing consumer responses." This aspect is explicitly described in the various portion of d'Eon cited:

"Accordingly, it is an object of the present invention to provide a system and method for assessing the effectiveness of Internet advertising."  
(Col. 2, lines 29-32.)

"In a preferred embodiment, the subsequent transactional activity includes one or more of: purchasing products or services advertised by the advertisements, initiating and/or completing a computer software download from the site, and cancelling purchases of products or services advertised by the one or more advertisements. Preferably, an average revenue value is correlated to the number of impressions associated with the advertisement, and an advertisement cost value is correlated to the number of impressions associated with the advertisement, as indications of the effectiveness of the advertisement." (Col. 3, lines 7-16.)

"It is to be understood that further post-impression transactional activity columns can be provided in the table 58 shown in FIG. 6. For example, columns can be displayed that show the number of cancellations per advertisement, the cost to acquire a user per advertisement, the average revenue value for each user order per advertisement, or other desired post-impression indication of the effectiveness of each advertisement 30, 32, 34." (Col. 7, lines 7-14.)

As described, d'Eon assesses the effectiveness of the actual electronic content itself, not the particular channel over which the content is delivered. Specifically, d'Eon looks to "subsequent" and "post-impression" data defined as "transactional activity." The intent, as explicitly stated in d'Eon, is to assess the "effectiveness of each advertisement;" that is, the effectiveness of the particular advertisement conveyed, not the channel over which the advertisement is conveyed. Which particular content is most effective, however, indicates nothing about which channel is more effective than other channels for conveying an advertisement.

Similarly, it is stated at page 4 of the Office Action that d'Eon teaches the desirability of "ascertaining which banners are and are not effective in causing a user to make a transaction decision." Again, though, assessing which of several different banners is effective has nothing to do with assessing the most effective channel for conveying a banner to a user.

Rakoshitz is cited at page 7 of the Office Action as dealing with "transmitting parameters and controlling the flow rate parameters." In the portion cited in the Office Action, Rakoshitz provides:

"Tool 208 performs incoming and/or outgoing management of information over the network of computers. In a specific embodiment, traffic management tool 208 performs inbound and outbound monitoring and control of flows based upon application, source address, destination address, URL, time of day, day of week, day of month, and other variations. In a specific embodiment, tool 208 also monitors, controls, and produces reports and alarms, which can enhance a whole spectrum of traffic monitoring and control activities ranging from bandwidth/latency control to capacity planning.

"In a specific embodiment, the bandwidth management tool adapts to "real" changes on any pre-existing networking system. For example, network infrastructure management involves a continuous process of monitoring, reporting, and deploying changes to match network growth or changing needs in a growing office, for example. These changes exist at various levels and time scales. As merely examples, the network changes can be to enforce a QoS Policy for a critical service, add WAN bandwidth, segment the network, upgrade a router, choose a guaranteed service level for a web site (e.g., user's own wet site), or notify "Mr. Hog" (i.e., a user occupying too much bandwidth) that he should schedule his large personal downloads at more prudent times such as late at night, for example." (Col. 10, lines 13-36.) (Emphasis added.)

As described, Rakoshitz's tool looks to "real" factors; that is, network capacity factors such as bandwidth. As made explicit throughout the Specification, as well as each of the cited references, network resources are a factor wholly distinct from "effectiveness" in terms of content or channel. The effectiveness of a channel depends on

the responses of targeted users, not the resources of a network as considered by Rakoshitz. Network resources – neither their availability nor lack thereof – do not determine which channel is most effective from the standpoint of any particular user. Specifically, network resources are distinct from a consumer response, which is often if not always uniquely subjective to the preferences of the particular consumer.

Accordingly, Rakoshitz analysis of "real" network factors or resources does not teach or suggest analyzing received consumer responses associated with each of a plurality of delivery channels used to transmit the electronic content and, based upon those received consumer responses analyzed, determining which of the plurality of delivery channels is more effective than each of the other of the plurality of delivery channels, as recited in amended Claims 1, 11, and 14. It follows, therefore, that Rakoshitz also fails to teach or suggest selectively redirecting at least a portion of the electronic content from other of the plurality of delivery channels to the delivery channel determined to be more effective, as further recited in amended Claims 1, 11, and 14. Applicants respectfully submit, moreover, that none of the other cited references provide the teachings lacking in both d'Eon and Rakoshitz.

Accordingly, not d'Eon, Rakoshitz, or any other reference cited, either alone or in combination, teaches or suggests every feature recited in amended Claims 1, 11, and 14. Applicants respectfully submit, therefore, that Claims 1, 11, and 14 define over the prior art. Applicants further respectfully submit that whereas each of the remaining claims depends from Claim 1, 11, or 14 while reciting additional features, each of these dependent claims likewise defines over the prior art.

### CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the



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undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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